

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In Re: Constance Dudley

NO. C 06-01371 JW
(Bankruptcy case no. 03-52149)

RELATED CASE: C-06-01671-JW

**ORDER REGARDING APPEAL FROM
DECISION OF BANKRUPTCY COURT**

I. INTRODUCTION

Creditor Charles K. Clapp appeals from an Order of the Bankruptcy Court granting a motion to approve a compromise and from a related discovery Order. This Court has jurisdiction based on Appellant's election.

Both Orders are review for abuse of discretion. In re A&C Properties, 784 F.2d 1377 (9th Cir. 1986). Applying this standard, the Court affirms the Order of the Bankruptcy Court as to both Orders.

II. BACKGROUND

On April 4, 2003, Constance Dudley filed a voluntary petition for bankruptcy relief. Among her properties, Dudley listed her interest in the "Lincoln Trust." Indeed, Constance and her husband created the Lincoln Trust pursuant to a settlement in a California Superior Court dissolution proceeding. The Trust document and Settlement Agreement contained provisions which provided

1 that the Trust was for the benefit of their minor children with Dudley being entitled to the net
2 income during her lifetime. Distribution of income was subject to control by the Trustees. A
3 dispute developed among the Debtor, the Trustee and the Lincoln Trustees over whether the
4 circumstances under which the Trust was created made the income to which Dudley was entitled
5 subject to the claims of her creditors. Summary judgment motions were made to the Bankruptcy
6 Court to determine the issue and for relief from the automatic stay to allow the parties to seek
7 reformation of the Trust in the Monterey Superior Court.

8 With the summary judgment motions pending, the Bankruptcy Court referred Dudley, the
9 Lincoln Trust and the Bankruptcy Trustee to voluntary mediation. Although initially, Dudley
10 refused to enter into the settlement, she eventually she agreed. The settlement was subject to
11 approval by the Bankruptcy Court and the Monterey County Superior Court. The Trustee and the
12 Lincoln Trustee reached a settlement.

13 On December 10, 2005, the Bankruptcy Trustee filed a motion with the Bankruptcy Court to
14 approve the settlement. Charles K. Clapp, a creditor and the Appellant on this appeal filed an
15 opposition to the settlement. Clapp also sought to subpoena information relating to the creation of
16 the Trust. Dudley moved to quash the subpoenas.

17 After considering the legal issues with respect to the character of the Trust, the nature of the
18 compromise, the positions of the Bankruptcy Trustee, the Debtor and the objections by Clapp, the
19 Bankruptcy Court approved the compromise and granted the motion to quash Clapp's subpoenas.
20 Thus, the issue on appeal is whether the Bankruptcy Court properly exercised its discretion to
21 approve the settlement and to quash the subpoenas.

22 III. DISCUSSION

23 The Bankruptcy Court has great latitude in approving compromises in cases pending before
24 it. In re A&C Properties, 784 F.2d at 1380-1381. In this case, the Bankruptcy Court gave due
25 consideration to the complexity of the legal dispute with respect to the nature of the Trust. The
26 declarations of its creators and the fact that it was created as part of marital dissolution proceedings,

1 created a substantial risk that the creditors would not receive any benefit from its existence. The
2 compromise provided substantial income to the estate and even made provisions such that
3 Appellant, if he disagreed with the assessment, could outbid the settlement. There was no abuse of
4 discretion.

5 The judgment with respect to the acceptability of the settlement meant that the subpoenas
6 were unnecessary. There was no abuse of discretion in quashing the subpoenas.

7 **IV. CONCLUSION**

8 The Orders of the Bankruptcy Court are affirmed. The stay pending appeal is lifted. (See
9 Docket Item No. 4.) The case is remanded to the Bankruptcy Court for further proceedings
10 consistent with this Order.

11
12 Dated: September 6, 2006



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Amy E Wallace Potter amy.wallace@dlapiper.com
3 Christopher Alliotts calliotts@sulmeyerlaw.com
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5 Sandi Meneely Colabianchi smcolabianchi@luce.com

6 **Dated: September 6, 2006**

Richard W. Wieking, Clerk

7
8 **By: /s/ JW Chambers**
9 **Elizabeth Garcia**
10 **Courtroom Deputy**